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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

VINCENT H. PINDER,

Plaintiff,

v.

HAROLD MIKE BYRNE, *et al.*,

Defendants.

Case No.: 3:16-cv-00742-MMD-WGC

ORDER

Re: ECF No. 61

13 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 61). Plaintiff
14 bases his motion on (1) the fact that the substantive issues and procedural matters in this case are
15 too complex for Plaintiff's comprehension and abilities, (2) that Plaintiff's incarceration will
16 greatly limit his ability to effectively litigate his case, and (3) and that Plaintiff "will need to call
17 upon expert testimony in regards to the complexity and difficulty of the case as the usage of certain
18 machinery that the Plaintiff cannot access without having counsel to investigate and call upon
19 these expert witnesses on fact-based or expert-based refutertion (sic) of prison officials argument
20 in the manner the rules provide." (*Id.* at 3.)

21 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
22 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
23 Court has generally stated that although Congress provided relief for violation of one's civil rights

1 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
2 federal court and not a right to discover such claims or even to litigate them effectively once filed
3 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

4 In very limited circumstances, federal courts are empowered to request an attorney to
5 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
6 however, are exceedingly rare, and the court will grant the request under only extraordinary
7 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
8 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

9 A finding of such exceptional or extraordinary circumstances requires that the court
10 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
11 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
12 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
13 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff has shown an ability to
14 articulate his claims. (ECF Nos. 1, 3, 5, 6, 9, 16, 20, 39, 44, 61, 62, 63, 64.)

15 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

16 If all that was required to establish successfully the
17 complexity of the relevant issues was a demonstration of
18 the need for development of further facts, practically all
19 cases would involve complex legal issues. Thus,
20 although *Wilborn* may have found it difficult to
articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the
complexity of the issues involved was sufficient to
require designation of counsel.

21 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
22 the request for appointment of counsel because the Plaintiff failed to establish the case was
23 complex as to facts or law. 789 F.2d at 1331.

1 Despite Plaintiff's characterization of this action as being complicated, the substantive
2 claims involved in this action are not unduly complex. Plaintiff's Second Amended Complaint was
3 allowed to proceed on Count II alleging a conditions of confinement and retaliation claim against
4 Defendant Oakley, Count III alleging a deliberate indifference to serious medical needs and
5 retaliation claim against Defendants Byrne and Shultheis, and Count IV alleging a retaliation
6 claim against Defendants Byrne and Tavis. (ECF No. 14 at 9.)

7 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
8 the likelihood of success on the merits of his claims.


9 While any *pro se* inmate such as Mr. Pinder would likely benefit from services of counsel,
10 that is not the standard this court must employ in determining whether counsel should be appointed.
11 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

12 The court does not have the power "to make coercive appointments of counsel."
13 *Mallard v. U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under
14 exceptional circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130
15 S.Ct. 1282 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for
16 appointment of counsel are present in this case.

17 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
18 Counsel (ECF No. 61).

19 **IT IS SO ORDERED.**

20 Dated: February 24, 2020.

21 
22 WILLIAM G. COBB
23 UNITED STATES MAGISTRATE JUDGE